

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



77-1002

To be argued by  
RHONDA FIELDS

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

Docket No. 77-1002

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UNITED STATES OF AMERICA,

—against—

ANGEL CASTILLON.

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*Appellee,*

*Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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BRIEF FOR APPELLEE

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UNITED STATES OF AMERICA,

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—against—

ANGEL CASTILLON,

*Appellant.*

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**BRIEF FOR APPELLEE**

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**Preliminary Statement**

Angel Castillon appeals from a judgment entered in the United States District Court for the Eastern District of New York (Mishler, C.J.) after a jury trial which convicted him of conspiring, between May 1975 and August 1975, to distribute and possess with intent to distribute quantities of cocaine, a Schedule II narcotic drug controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Appellant was sentenced on December 17, 1976 to five years imprisonment and a special parole term of five years. He is presently at large on bail pending this appeal.<sup>1</sup>

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<sup>1</sup> Named also in the indictment were Santiago Cabada, Carlos Hurtado, Lucy Alvarez, Jose Guzman and Donald Payden. Cabada, Hurtado and Alvarez were tried with appellant and the jury was unable to reach a verdict as to them. The case against these defendants was subsequently dismissed. Jose Guzman and Donald Payden pled guilty to superseding informations and were sentenced to one year and four years imprisonment, respectively.

On this appeal, based on an erroneous reading of the trial record, appellant raises an issue that is wholly lacking in merit: that the District Court improperly prejudiced the jury by aiding in the identification of the accused and refusing to allow cross-examination on this point. Appellant does not attack the sufficiency of the evidence but, in fact, concedes that "much evidence was introduced at the trial tending to prove the guilt of [appellant]" (Appellant's Brief, p. 7).

### Statement of the Case

In May of 1975, Jesus Torrado, a fugitive from justice,<sup>2</sup> was residing in Fort Lauderdale, Florida and living under the assumed name of Pablo Cruz (7).<sup>3</sup> Finding himself in a somewhat unpleasant financial situation, Torrado sought to re-enter his old profession, that of narcotics dealer. He was informed by his wife's aunt, Hortensia Lopez, that one Santiago Cabada was in the narcotics business, and he arranged to be introduced to Cabada at Cabada's Miami apartment (9-10). Torrado and Cabada immediately reached a common ground of understanding and Cabada agreed to seek a supplier of cocaine for Torrado (11).

Shortly after this initial meeting, Cabada introduced Torrado to appellant Angel Castellon at Castellon's house in Hialeah, Florida (13-14).<sup>4</sup> Angel Castellon agreed,

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<sup>2</sup> Federal warrants were outstanding against Torrado in the Eastern District of New York, Southern District of Florida and the District of New Jersey.

<sup>3</sup> Refers to trial transcript.

<sup>4</sup> Both appellants Castellon and Cabada were identified by Torrado during his testimony (9, 13-14). Identification of appellant Castellon was later conceded (273, 819).

after a few meetings, to sell Torrado a kilogram of cocaine for \$25,000 (51). Prior to the transfer of this kilogram, Castillon delivered one-eighth of a kilogram of cocaine (an "eighth") to Torrado and Cabada at a coffee shop in Miami, Florida. For this "sample" Torrado paid Castillon \$4,000 (39-43).

A few days after the delivery of the "eighth", in early May of 1975, Castillon and Carlos Hurtado delivered one kilogram of cocaine to Torrado at Cabada's apartment. Torrado paid Castillon \$25,000 for the cocaine (52-58).

Contemporaneous with the Castillon negotiations, Torrado had also been making plans with Lucy and Jesus Alvarez.<sup>5</sup> The Alvarez's agreed to find customers for the cocaine which Torrado was arranging to purchase from Castillon. Pursuant to this agreement they left for New York immediately after Torrado took delivery of the cocaine (59-60). Approximately two days later Torrado, in possession of the cocaine and an automatic weapon, drove to New York City and rendezvoused on May 16, 1975 with the Alvarez's in a Queens motel (63-64).

The Alvarez's, with the assistance of two others, Pedro Abella and Rosa Rodriguez, had arranged for two customers to purchase the cocaine. One was Donald Payden and the other "the Italian", a man to whom Rosa Rodriguez had sold narcotics on two prior occasions. Before meeting "the Italian", Torrado and Jesus Alvarez left the Queens motel and sold an "eighth" of cocaine to Donald Payden in the Bronx, New York (66-70). Later

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<sup>5</sup> Jesus Alvarez, Pedro Abella and Rose Rodriguez were named as unindicted co-conspirators in the Federal indictment. All three were prosecuted by New York State Authorities.



that same afternoon Jesus Alvarez and Torrado sold a kilogram of cocaine to "the Italian" in a parking lot located at 94th Street and 23rd Avenue in Queens. "The Italian" was in fact New York City undercover officer Frank Pinto and during the course of the narcotics transaction shots were fired and Torrado was critically wounded (74-77; 230-233).

Aida Torrado, the wife of Jesus Torrado, rushed to her husband's bedside when she learned of his injury (242). Torrado told Aida that she must see Cabada in an effort to raise money for his release on bail (243). Aida returned to Florida and met Cabada. He attempted to post the bail but did not have the necessary \$20,000 security (244-247).

Unable to raise the bail money, Cabada suggested that Aida see appellant Castellon who would help Aida by either giving her money or supplying cocaine for resale (248). In late July of 1975, Aida met with Castellon at a bar in Miami and he ultimately agreed to sell her cocaine (250-251). Immediately thereafter Aida returned to New York, and she and her husband agreed to cooperate with the government.

On August 5, 1975, Aida Torrado, equipped with a body tape recorder<sup>6</sup> and under surveillance of the Drug Enforcement Administration, purchased an "eighth" of cocaine from Castellon at his home in Hialeah, Florida (278-281) (625-628). On August 8, 1975, Aida returned to Castellon's home and purchased 1/2 kilogram of cocaine, making partial payment to Castellon of \$6,000 (366-369; 632-637).

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<sup>6</sup> Eight tape recordings were made of conversations between Aida Torrado and Angel Castellon. All were admitted into evidence. Only the conversation of August 5, 1975 was translated and read to the jury.

Angel Castillon was arrested at his home on August 8, 1975. After being advised of his rights in Spanish by a bilingual agent, he made the following statement: "I delivered cocaine on two occasions." (584-591). Appellant presented evidence, in the form of a stipulation, that he had transacted jewelry business with six firms in Miami. He called no witnesses.<sup>7</sup>

## ARGUMENT

**There was no error committed with respect to the in-court identification of appellant.**

This is an appeal which is based on an erroneous reading of a trial record that is unmistakably clear. As a result, an alleged error has been raised on this appeal that, we respectfully submit, is wholly without merit. Somehow and without any basis in the record, appellant claims that at trial Chief Judge Mishler both aided in the identification of the appellant by accomplice witness Torrado, and then improperly refused to permit cross-examination of Torrado on this in-court identification.

It appears to be appellant's argument that Castillon was "singled out by the judge, early in the trial" (App. Br., p. 7) and then was prevented from "attempting to demonstrate to the jury that the witness [Torrado] had not actually identified" appellant (App. Br., p. 4). But, the record simply and clearly shows that this was not what happened: Chief Judge Mishler did not *single* out

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<sup>7</sup> Appellant attempted to develop on cross-examination and during summation, an argument that he sold jewelry not narcotics to the Torrado's. It was for this purpose that he offered the stipulation (149, 150, 430, 934).

Castillon *nor* prevent appellant from showing that he had not been identified by Torrado.

According to appellant's misreading of the record, "the actual identification of Castillon was in reality made by the judge" there being "no clear identification of Mr. Castillon by the witness before Mr. Castillon was required to stand by the judge." (App. Br., pp. 5, 6). This is simply nonsense. What actually transpired is clear in the record. After Torrodo testified that he was taken by co-defendant Cabada to a house in Hialeah, Florida, the following colloquy occurred:

"Q. [A.U.S.A. Clayman] What if anything occurred when you got to this house in Hialeah?

A. [Torrado] There were two other people in the house.

Q. Do you see either of the two people that were in that house in court today?

THE COURT: Would you like to stand up and look around.

THE WITNESS: Yes.

Q. Who is it that you see, sir?

A. The man who is seated up front in green, who has the short haircut.

THE COURT: Will you stand up, Mr. Castillon? Is that the man you identified?

THE WITNESS: Yes.

THE COURT: Let the record show the witness identified the defendant Angel Castillon. (T. 13-14)



No objection was made to this identification nor to the request by the court that defendant Castillon stand up after he had been identified. Moreover, at no time was there any request for a voir dire or identification hearing. This lack of objection or further request is not surprising since identification was never an issue in the case. Indeed, during the trial the wife of Torrado, Aida Torrado, identified appellant Castillon as the individual from whom she purchased cocaine and appellant, at this point in the trial conceded identification (273). Thus, identification was simply never a question during the trial. The defense, to the extent that there was one, was that appellant Castillon had sold jewelry and not narcotics to Torrado and his wife Aida. (e.g., 149-150, 430, 934).

Additionally, appellant was not prevented from trying to establish that he had not been identified by Torrado. What appellant was prevented from doing—and properly we submit—was from misstating Torrado's direct testimony on cross-examination. On direct examination, Torrado identified co-defendant Santiago Cabada prior to his identification of appellant. The identification of Cabada was as follows:

"Q. [A.U.S.A. Clayman] Sir, do you see Santiago Cabada in court here today?

A. [Torrado] Yes.

Q. Would you point him out to us please.

A. The man dressed in green right there in the corner.

THE COURT: Let the record show the witness pointed out the defendant Santiago Cabada."

(9)

Thereafter, on cross-examination Torrado was asked whether he recalled identifying Mr. Cabada as the gentle-

man who is on my right with the green suit with the flat top?" (143).<sup>8</sup> Since counsel was mistakenly referring to Castillon instead of Cabada, the prosecutor quite properly objected:

MR. CLAYMAN [A.U.S.A.]: Objection, your Honor, that was not the testimony.

THE COURT: Objection sustained. The jury will recall the identification, and for the record let me say that the witness properly identified the defendant Cabada.

MR. CRANIS [appellant's counsel]: I don't wish to argue the question but that took place afterwards.

THE COURT: Next question, Mr. Cranis.

MR. CRANIS: Would it be possible, your Honor, in the morning for the court reporter to find it and have that read back?

THE COURT: No. If the jury wants to hear it, I will have it read back to the jury, but you please present the next question, Mr. Cranis. (143-144).

No objection was made. Therefore, absent plain error, the issue is not available for review by this court absent a showing of plain error. (Rule 52, Fed. Rules of Criminal Procedure.) Since Chief Judge Mishler was correct in his statement that Cabada was properly identified, this minor trial incident can hardly be characterized as "plain error" or any error at all. Accordingly, appellant's contention is frivolous.

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<sup>8</sup> This was actually Castillon, not Cabada (13-14).

**CONCLUSION**

**The judgment of conviction should be affirmed.**

Dated: April 14, 1977

Respectfully submitted,

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*Castellon*

# AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK } ss

BARBARA ALLEN

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 14th day of April 1977s he served a copy of the within 2 cys of the Brief for the Appellee

by placing the same in a properly postpaid franked envelope addressed to:

KRANIS & KRANIS, ESQS.

25 Broad Street

New York, New York 10004

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

*Barbara Allen*  
BARBARA ALLEN

Sworn to before me this

14th day of April 1977

*Carolyn N. Johnson*  
CAROLYN N. JOHNSON  
NOTARY PUBLIC, State of New York  
No. 41-418298

Qualified in Queens County  
Term Expires 12-30-79